

Chapter 159G.

Water Infrastructure.

Article 1.

General Provisions.

§§ 159G-1 through 159G-18: Repealed by Session Laws 2005-454, s. 2, effective January 1, 2006.

§ 159G-19. Reserved for future codification purposes.

§ 159G-20. Definitions.

The following definitions apply in this Chapter:

- (1) **Affordability.** – The relative affordability of a project for a community compared to other communities in North Carolina based on factors that shall include, at a minimum, water and sewer service rates, median household income, poverty rates, employment rates, the population of the served community, and past expenditures by the community on water infrastructure compared to that community's capacity for financing of water infrastructure improvements.
- (1a) **Asset management plan.** – The strategic and systematic application of management practices applied to the infrastructure assets of a local government unit in order to minimize the total costs of acquiring, operating, maintaining, improving, and replacing the assets while at the same time maximizing the efficiency, reliability, and value of the assets.
- (1b) **Authority.** – The State Water Infrastructure Authority created and established pursuant to Article 5 of this Chapter.
- (1c) **Construction costs.** – The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:
 - a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.
 - b. Legal, fiscal, administrative, and contingency costs.
 - c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.
 - d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.
 - e. The cost to acquire real property or an interest in real property.
- (2) **CWSRF.** – The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (3) **Department.** – The Department of Environmental Quality.
- (4) Repealed by Session Laws 2011-145, s. 13.3(ggg), effective July 1, 2011.
- (5) Repealed by Session Laws 2013-360, s. 14.21(d), effective July 1, 2013 and Repealed by Session Laws 2013-413, s. 57(q), effective August 23, 2013.

- (5a) Repealed by Session Laws 2013-360, s. 14.21(d), effective July 1, 2013.
- (5b) Division. – Division of Water Infrastructure.
- (6) Drinking Water Reserve. – The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (7) DWSRF. – The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
- (8) Grant. – A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.
- (9), (10) Repealed by Session Laws 2015-241, s. 14.13(b), effective July 1, 2015.
- (10a) Investor-owned drinking water corporation. – A corporation owned by investors and incorporated solely for the purpose of providing drinking water services for profit.
- (11) Loan. – A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.
- (12) Local Government Commission. – The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.
- (13) Local government unit. – Any of the following:
 - a. A city as defined in G.S. 160A-1.
 - b. A county.
 - c. A consolidated city-county as defined in G.S. 160B-2.
 - d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.
 - e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.
 - f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
 - g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.
 - h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.
 - i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.
- (13a) Merger. – The consolidation of two or more water and/or sewer systems into one system with common ownership, management, and operation.
- (14) Nonprofit water corporation. – A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.
- (15) Public water system. – Defined in G.S. 130A-313.
- (16) Regionalization. – The physical interconnecting of an eligible entity's wastewater system to another entity's wastewater system for the purposes of providing regional treatment or the physical interconnecting of an eligible

- entity's public water system to another entity's water system for the purposes of providing regional water supply.
- (17) Reserved.
 - (18) Secretary. – The Secretary of Environmental Quality.
 - (19) State. – The State of North Carolina.
 - (20) Stormwater quality project. – A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.
 - (21) Targeted interest rate project. – Either of the following types of projects:
 - a. A project that is awarded a loan from the Drinking Water Reserve or the Wastewater Reserve based on affordability.
 - b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.
 - (22) Treasurer. – The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.
 - (23) Wastewater collection system. – A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.
 - (24) Wastewater Reserve. – The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.
 - (25) Wastewater system. – A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.
 - (26) Wastewater treatment works. – The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.
 - (27) Water Infrastructure Fund. – The fund established in G.S. 159G-22. (2005-454, s. 3; 2010-151, s. 1; 2011-145, ss. 13.3(ggg), 13.11A(a); 2013-360, s. 14.21(d); 2013-413, s. 57(q); 2014-115, s. 17; 2015-241, ss. 14.13(a), (b), 14.30(u), (v).)

§ 159G-21. Revenue for water projects.

This Chapter governs the use of the following revenue:

- (1) Revenue appropriated to the Department to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of the federal funds.
- (2) Revenue appropriated to the Department to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of these funds. (2005-454, s. 3.)

§ 159G-22. Water Infrastructure Fund.

(a) Fund Established. – The Water Infrastructure Fund is established as a special revenue fund. The Fund is comprised of the accounts set out in this section. The Fund provides revenue through its accounts for loans and grants as provided in this Chapter to meet the water infrastructure needs of the State. The Treasurer is responsible for distributing and investing all revenue received by the Fund. Interest and other investment income earned by the Fund accrues to it and must be allocated to the account to which the income is attributable. Accounts to which federal funds are credited must be kept separate from accounts that do not receive federal funds. A payment of the principal of or interest on a loan made from an account of the Fund must be credited to the account from which the loan was made.

(b) CWSRF. – The Clean Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for wastewater projects and the State funds required to match the federal funds. The account is established under and must be managed in accordance with Title VI of the Federal Water Quality Act of 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these federal acts and the federal regulations adopted to implement the acts. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(c) DWSRF. – The Drinking Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for public water systems and the State funds required to match the federal funds. The account is established under and must be managed in accordance with section 130 of Title 1 of the federal Safe Drinking Water Act of 1996 as amended, 42 U.S.C. § 300J-12, to achieve the purposes of that act. The account must comply with that act and the federal regulations adopted to implement the act. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(d) Wastewater Reserve. – The Wastewater Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for wastewater systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(e) Wastewater Accounts. – The Department is directed to establish accounts within the Wastewater Reserve to administer loans and grants for wastewater collection systems, wastewater treatment works, stormwater quality projects, and nonpoint source pollution projects. The wastewater accounts must include an account for each type of loan or grant set out in G.S. 159G-33.

(f) Drinking Water Reserve. – The Drinking Water Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for public water systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(g) Drinking Water Accounts. – The Department is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34. (2005-454, s. 3.)

§ 159G-23. Priority consideration for loan or grant from Wastewater Reserve or Drinking Water Reserve.

The considerations for priority in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Infrastructure must consider the following items when evaluating applications:

- (1) Public necessity. – A project that promotes public health and protects the environment, improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system.
- (2) Effect on impaired waters. – A project that improves designated impaired waters of the State.
- (3) Efficiency. – A project that achieves efficiencies in meeting the State's water infrastructure needs or reduces vulnerability to drought consistent with Part 2A of Article 21 and Article 38 of Chapter 143 of the General Statutes by one of the following methods:
 - a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.
 - b. Conservation or reuse of water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.
 - c. Construction of an interconnection between water systems intended for use in drought or other water shortage emergency.
 - d. Repair or replacement of leaking waterlines to improve water conservation and efficiency or to prevent contamination.
 - e. Replacement of meters and installation of new metering systems.
- (4) Comprehensive land-use plan. – A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has higher priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.
- (5) Flood hazard ordinance. – A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has higher priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has equal consideration under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood

- Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.
- (6) Sound management. – A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management.
 - (6a) Asset management plan. – A project submitted by a local government unit with more than 1,000 service connections that has developed and is implementing an asset management plan.
 - (7) Capital improvement plan. – A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages, so long as the capital improvement plan sets out the applicant's expected water infrastructure needs for at least 10 years.
 - (8) Coastal habitat protection. – A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8. If no part of the service area of a project is located within a county subject to that Plan, the project has equal priority under this subdivision with a project that receives priority under this subdivision.
 - (9) Affordability. – The relative affordability of a project for a community compared to other communities in North Carolina.
 - (10) Merger and Regionalization. – A project to provide for the planning of regional public water and wastewater systems, to provide for the orderly coordination of local actions relating to public water and wastewater systems, or to help realize economies of scale in regional public water and wastewater systems through consolidation, management, merger, or interconnection of public water and wastewater systems. If an applicant demonstrates that it is not feasible for the project to include regionalization, the funding agency shall assign the project the same priority under this subdivision as a project that includes regionalization.
 - (11) State water supply plan. – A project that addresses a potential conflict between local plans or implements a measure in which local water supply plans could be better coordinated, as identified in the State water supply plan pursuant to G.S. 143-355(m).
 - (12) Water conservation measures for drought. – A project that includes adoption of water conservation measures by a local government unit that are more stringent than the minimum water conservation measures required pursuant to G.S. 143-355.2.
 - (13) Low-income residents. – A project that is located in an area annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents. (2005-454, s. 3; 2008-143, s. 15; 2010-151, s. 2; 2011-145, s. 13.3(hhh); 2011-396, s. 11.2; 2013-360, s. 14.21(e); 2013-413, s. 57(r); 2014-115, s. 17; 2015-241, s. 14.13(c).)

§ 159G-24. Fee imposed on a loan or grant from Water Infrastructure Fund.

(a) A loan awarded from the Water Infrastructure Fund is subject to a fee of two percent (2%) of the loan. A grant awarded from the Water Infrastructure Fund is subject to a fee of one and one-half percent (1 1/2%) of the grant. The fee is payable when a loan or grant is awarded.

(b) Departmental Receipt. – The fee on a loan from the Water Infrastructure Fund is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Water Infrastructure Fund is a departmental receipt of the Department and must be applied to the Department's costs in administering grants from these Reserves. (2005-454, s. 3; 2012-142, s. 12.01.)

§ 159G-25. Expenditure for emergency corrective action at a wastewater treatment works.

(a) The Department may use revenue in any account of the Wastewater Reserve to provide funds for emergency corrective action at a wastewater treatment works under the circumstances set out in this section. The amount expended in a fiscal year for corrective action under this section may not exceed two hundred thousand dollars (\$200,000). An expenditure for emergency corrective action is authorized only under the following circumstances:

- (1) A person holding a wastewater discharge or nondischarge permit issued under Article 21 of Chapter 143 of the General Statutes is violating the terms of the permit.
- (2) The wastewater treatment works operated under the permit has a design flow capacity of no more than 100,000 gallons a day.
- (3) The Department has given the permit holder written notice of the violation.
- (4) The permit holder refuses to take the action required to comply with the permit.
- (5) The inaction by the permit holder poses a threat to public health.
- (6) The Department has informed the permit holder in writing that the Department plans to take emergency corrective action and then bring a civil action against the permit holder to recover the cost of the emergency corrective action.

(b) The Department may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action must be credited to the account in the Wastewater Reserve from which the funds were expended. (2005-454, s. 3.)

§ 159G-25.5. Emergency expenditure for operating deficits incurred by certain public water systems and wastewater systems.

The Department may use funds in the Wastewater Reserve or the Drinking Water Reserve to provide grants to the Local Government Commission to cover deficits in the operating expenses of a public water or wastewater system in either of the following circumstances:

- (1) The Local Government Commission has exercised its powers under G.S. 159-181 to assume full or partial control over the affairs of the public water or wastewater system or of the unit of local government or public authority that owns or operates the public water or wastewater system.
- (2) The charter of the unit of local government or public authority that owns or operates the public water or wastewater system has been suspended or revoked by local act. (2019-226, s. 1.)

§ 159G-26. Annual reports on Water Infrastructure Fund.

(a) Requirement. – The Department shall publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Infrastructure. The report shall be published by November 1 of each year and cover the preceding fiscal year. The Department shall make the report available to the public and shall give a copy of the report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division with the report required by G.S. 159G-72 as a single report.

(b) Content. – The report required by this section must contain the following information concerning the accounts of the Water Infrastructure Fund:

- (1) The beginning and ending balance of the account for the fiscal year.
- (2) The amount of revenue credited to the account during the fiscal year, by source.
- (3) The total amount of loans and grants awarded from the account, by type, and the amount of any expenditure for emergency corrective action made from the account.
- (4) For each loan or grant awarded, the recipient of the award, the amount of the award, the amount of the award that was disbursed, and the amount of the award remaining to be disbursed in a subsequent fiscal year.
- (5) The amount disbursed for loans and grants awarded but not disbursed in a prior fiscal year and the amount remaining to be disbursed in a subsequent fiscal year.
- (6) An assessment of the expected impact on water quality and water supply of the projects for which the loans and grants were awarded. (2005-454, s. 3; 2011-145, s. 13.3(iii); 2013-360, s. 14.21(f); 2013-413, s. 57(s); 2014-115, s. 17; 2017-10, s. 4.17(a).)

§ 159G-27. Reserved for future codification purposes.

§ 159G-28. Reserved for future codification purposes.

§ 159G-29. Reserved for future codification purposes.

Article 2.

Water Infrastructure Loans and Grants Administered by Department.

§ 159G-30. Department's responsibility.

The Department, through the Division of Water Infrastructure, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve and shall administer the award of funds by the State Water Infrastructure Authority from the Community Development Block Grant program to local government units for infrastructure

projects. (2005-454, s. 3; 2011-145, s. 13.3(jjj); 2013-360, s. 14.21(g); 2013-413, s. 57(t); 2014-115, s. 17; 2015-241, s. 14.13(c1).)

§ 159G-31. Entities eligible to apply for loan or grant.

(a) A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. An investor-owned drinking water corporation is also eligible to apply for a loan or grant from the DWSRF. Other entities are not eligible for a loan or grant from these accounts.

(b) Entities eligible in subsection (a) of this section for grants from the Wastewater Reserve and the Drinking Water Reserve may be limited, based on affordability, to a portion of the total construction costs for the project types defined in G.S. 159G-33(a)(2) and G.S. 159G-34(a)(2).

(c) To the extent that funds are available, loans shall be considered for the portion of construction costs not eligible for grant funding. (2005-454, s. 3; 2011-145, s. 13.11A(b); 2015-241, s. 14.13(c2).)

§ 159G-32. Projects eligible for loan or grant.

(a) CWSRF and DWSRF. – Federal law determines whether a project is eligible for a loan or grant from the CWSRF and the DWSRF. A project must meet the eligibility requirements set under federal law.

(b) Wastewater Reserve. – The Department is authorized to make loans and grants from the Wastewater Reserve for the following types of projects:

- (1) Wastewater collection system.
- (2) Wastewater treatment works.
- (3) Stormwater quality projects, including innovative stormwater management projects and pilot projects.
- (4) Nonpoint source pollution project.

(c) Drinking Water Reserve. – The Department is authorized to make loans and grants from the Drinking Water Reserve for public water system projects. (2005-454, s. 3; 2013-360, s. 14.21(h).)

§ 159G-33. Loans and grants available from Wastewater Reserve.

(a) Types. – The Department is authorized to make the types of loans and grants listed in this subsection from the Wastewater Reserve. Each type of loan or grant must be administered through a separate account within the Wastewater Reserve.

- (1) Loan. – A loan is available for a project authorized in G.S. 159G-32(b).
- (2) Project grant. – A project grant is available for a portion of the construction costs of a wastewater collection system project, a wastewater treatment works project, or a stormwater quality project as authorized in G.S. 159G-32(b).
- (3) Merger/regionalization feasibility grant. – A merger/regionalization feasibility grant is available to determine the feasibility of consolidating the management of multiple utilities into a single utility operation or to provide regional treatment and the best way of carrying out the consolidation or regionalization. The Department shall not make a loan or grant under this subdivision for a

merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.

- (3a) Asset inventory and assessment grant. – An asset inventory and assessment grant is available to inventory the existing water and/or sewer system and document the condition of the inventoried infrastructure.
- (4) Emergency loan. – An emergency loan is available in the event the Secretary certifies that a serious public health hazard related to the inadequacy of an existing wastewater collection system or wastewater treatment works is present or imminent in a community.
- (5) Emergency grant for operating deficit. – An emergency grant for operating deficits is available for certain wastewater systems as set forth in G.S. 159G-25.5.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan. (2005-454, s. 3; 2015-241, s. 14.13(d), (e); 2019-226, s. 2.)

§ 159G-34. Loans and grants available from Drinking Water Reserve.

(a) Types. – The Department is authorized to make the types of loans and grants listed in this section from the Drinking Water Reserve. Each type of loan or grant must be administered through a separate account within the Drinking Water Reserve.

- (1) Loan. – A loan is available for a project for a public water system.
- (2) Project grant. – A project grant is available for a portion of the construction costs of a public water system project as defined in G.S. 159G-32(c).
- (3) Merger/regionalization feasibility grant. – A merger/regionalization grant is available to determine the feasibility of consolidating the management of multiple utilities into a single utility operation or to provide regional water supply and the best way of carrying out the consolidation or regionalization. The Department shall not make a loan or grant under this subdivision for a merger or regionalization proposal that would result in a new surface water transfer regulated under G.S. 143-215.22L.
- (3a) Asset inventory and assessment grant. – An asset inventory and assessment grant is available to inventory the existing water and/or sewer system and document the condition of the inventoried infrastructure.
- (4) Emergency loan. – An emergency loan is available to an applicant in the event the Secretary certifies that either a serious public health hazard or a drought emergency related to the water supply system is present or imminent in a community.
- (5) Emergency grant for operating deficit. – An emergency grant for operating deficits is available for certain public water systems as set forth in G.S. 159G-25.5.

(b) Interaccount Transfer. – The Secretary may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan. (2005-454, s. 3; 2015-241, s. 14.13(f), (g); 2019-226, s. 3.)

§ 159G-35. Criteria for loans and grants.

(a) CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts must meet the criteria set under federal law. The Department is directed to establish through negotiation with the United States Environmental Protection Agency the criteria for evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to the criteria. The Department must incorporate the negotiated criteria and priorities in the Capitalization Grant Operating Agreement between the Department and the United States Environmental Protection Agency. The criteria and priorities incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The priority considerations in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Reserves. – The priority considerations in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. (2005-454, s. 3; 2015-241, s. 14.13(h).)

§ 159G-36. Limits on loans and grants.

(a) CWSRF and DWSRF. – Federal law governs loans and grants from the CWSRF and the DWSRF. An award of a loan or grant from one of these accounts must be consistent with federal law.

(b) Reserve Cost Limit. – The amount of a loan or grant from the Wastewater Reserve or the Drinking Water Reserve may not exceed the construction costs of a project. A loan or grant from one of these Reserves is available only to the extent that other funding sources are not reasonably available to the applicant.

(c) Reserve Recipient Limit. – The following limits apply to the loan or grant types made from the Wastewater Reserve or the Drinking Water Reserve to the same local government unit or nonprofit water corporation:

- (1) The amount of loans awarded for a fiscal year may not exceed three million dollars (\$3,000,000).
- (2) The amount of loans awarded for three consecutive fiscal years for targeted interest rate projects may not exceed three million dollars (\$3,000,000).
- (3) The amount of project grants awarded for three consecutive fiscal years may not exceed three million dollars (\$3,000,000).
- (4) The amount of merger/regionalization feasibility grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars (\$50,000).
- (5) The amount of asset inventory and assessment grants awarded for three consecutive fiscal years may not exceed one hundred fifty thousand dollars (\$150,000). (2005-454, s. 3; 2015-241, s. 14.13(i).)

§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.

(a) Application. – An application for a loan or grant from the CWSRF, the Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the Division of Water Infrastructure of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make

a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article.

(b) Certification. – The Division of Water Infrastructure shall require all local governments applying for loans or grants for water or wastewater purposes to certify that no funds received from water or wastewater utility operations have been transferred to the local government's general fund for the purpose of supplementing the resources of the general fund. The prohibition in this section shall not be interpreted to include payments made to the local government to reimburse the general fund for expenses paid from that fund that are reasonably allocable to the regular and ongoing operations of the utility, including, but not limited to, rent and shared facility costs, engineering and design work, plan review, and shared personnel costs. (2005-454, s. 3; 2011-145, s. 13.3(kkk); 2013-360, s. 14.21(i); 2013-413, s. 57(u); 2014-100, s. 14.17; 2014-115, s. 17.)

§ 159G-38. Environmental assessment and public hearing.

(a) Establish Environmental Assessment Process; Required Information. – The Division shall establish an environmental assessment process for projects funded from the CWSRF and DWSRF programs that is sufficient to meet federal environmental assessment requirements for such projects. Projects funded by the CWSRF or DWSRF shall meet the requirements of the environmental assessment process established pursuant to this subsection.

(b) Repealed by Session Laws 2015-90, s. 6, effective June 19, 2015.

(c) Hearing. – The Division may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application. (2005-454, s. 3; 2011-145, s. 13.3(III), (mmm); 2013-360, s. 14.21(j); 2013-413, s. 57(v); 2014-115, s. 17; 2015-90, s. 6.)

§ 159G-39. Review of applications and award of loan or grant.

(a) Point Assignment. – The Division of Water Infrastructure must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application for the Authority's review. The Authority must consider the Division's determination of rank when the Authority determines an application's rank. The Authority's determination of rank is conclusive.

(b) Initial Consideration. – The Division may consider an application for an emergency loan from the Wastewater Reserve or the Drinking Water Reserve at any time. The Division must consider all other loan applications and all grant applications filed during an application period at

the same time in order to rank the applications. The Division shall forward all applications received for the application period to the State Water Infrastructure Authority.

(c) Reconsideration. – When the Authority determines an application's rank is too low to receive an award of a loan or grant for an application period, the Division must include the application with those considered for the next application period. If the application's rank is again too low to receive an award, the application is not eligible for consideration in a subsequent application period. An applicant whose application does not receive an award after review in two application periods may file a new application.

(d) Notification of Decision. – When the Authority determines that an application's rank makes it eligible for an award of a loan or grant, the Division must send the applicant a letter of intent to award the loan or grant. The notice must set out any conditions the applicant must meet to receive an award of a loan or grant. When the applicant satisfies the conditions set out in the letter of intent, the Division must send the applicant an offer to award a loan or grant. The applicant must give the Division written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued. (2005-454, s. 3; 2011-145, s. 13.3(nnn); 2013-360, s. 14.21(k); 2013-413, s. 57(w).)

§ 159G-40. Terms of loan and execution of loan documents.

(a) Approval by Local Government Commission. – The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation and to an investor-owned drinking water corporation in accordance with the factors set out in G.S. 159-153.

(b) Interest Rate and Maturity. – The interest rate payable on and the maximum maturity of a loan are subject to the following limitations:

- (1) Interest rate. – The interest rate for a loan may not exceed the lesser of four percent (4%) or one half the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the Department, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target.
- (2) Maturity. – The maximum maturity for a loan for a project that is not a targeted interest rate project is 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a targeted interest rate project is 30 years or the project's expected life, whichever is shorter.

(c) Security for Loan. – A local government unit may pledge any of the following, alone or in combination, as security for an obligation to repay the principal of and interest on a loan awarded under this Article:

- (1) User fee revenues derived from operation of the wastewater system or public water system that benefits from the project for which the loan is awarded.

- (2) A mortgage, deed of trust, security interest, or similar lien on part or all of the real and personal property comprising the wastewater system or public water system that benefits from the project for which the loan is awarded.
- (3) Its full faith and credit if it meets the requirements of Article 4 of Chapter 159 of the General Statutes.
- (4) Nontax revenue not included in subdivision (1) of this subsection.

(d) Debt Instrument. – A local government unit, a nonprofit water corporation, and an investor-owned drinking water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units, nonprofit water corporations, and investor-owned drinking water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding. (2005-454, s. 3; 2011-145, s. 13.11A(c); 2015-207, s. 4(a); 2016-94, ss. 14.23(a), (b).)

§ 159G-41. Withdrawal of loan or grant.

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years after the date of the letter, unless the Department finds that the applicant has good cause for the failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the Department finds that the applicant has good cause for the failure. If the Department finds good cause for an applicant's failure, the Department must set a date by which the applicant must take action or forfeit the loan or grant. (2005-454, s. 3.)

§ 159G-42. Disbursement of loan or grant.

The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested. (2005-454, s. 3.)

§ 159G-43. Inspection of project.

(a) Authority. – The Department may inspect a project for which it awards a loan or grant under this Article to determine the progress made on the project and whether the construction of the project is consistent with the project described in the loan or grant application. The inspection may be performed by personnel of the Department or by a professional engineer licensed under Chapter 89C of the General Statutes.

(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

- (1) Is an officer or employee of the local government unit, nonprofit water corporation, or investor-owned drinking water corporation that received the loan or grant award for the project.

- (2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made. (2005-454, s. 3; 2011-145, s. 13.11A(d).)

§ 159G-44. Rules.

The Department may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the Department. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The Department must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy. (2005-454, s. 3.)

§ 159G-45. Reserved for future codification purposes.

§ 159G-46. Reserved for future codification purposes.

§ 159G-47. Reserved for future codification purposes.

§ 159G-48. Reserved for future codification purposes.

§ 159G-49. Reserved for future codification purposes.

§ 159G-50. Reserved for future codification purposes.

Article 3.

[Reserved.]

§§ 159G-51 through 159G-64: Reserved for future codification purposes.

Article 4.

State Water Infrastructure Commission.

§§ 159G-65 through 159G-67: Repealed by Session Laws 2013-360, s. 14.21(c), effective July 1, 2013.

§ 159G-68: Reserved for future codification purposes.

§ 159G-69: Reserved for future codification purposes.

Article 5.

State Water Infrastructure Authority.

§ 159G-70. State Water Infrastructure Authority created.

(a) Authority Established. – The State Water Infrastructure Authority is created within the Department of Environmental Quality.

(b) Membership. – The Authority consists of nine members as follows:

- (1) The Director of the Division of Water Infrastructure of the Department or the Director's designee who is familiar with the water infrastructure financing, regulatory, and technical assistance programs of the Department.
- (2) The Secretary of Commerce or the Secretary's designee who is familiar with the State programs that fund water or other infrastructure improvements for the purpose of promoting economic development.
- (3) The Director of the Local Government Commission or the Director's designee who is familiar with the functions of the Commission.
- (4) One member who is a professional engineer in the private sector and is familiar with the development of infrastructure necessary for wastewater systems, to be appointed by the Governor to a term that expires on July 1 of even-numbered years.
- (5) One member who is knowledgeable about, and has experience related to, direct federal funding programs for wastewater and public water systems, to be appointed by the Governor to a term that expires on July 1 of odd-numbered years.
- (6) One member who is knowledgeable about, and has experience related to, urban local government wastewater systems or public water systems, to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of even-numbered years.
- (7) One member who is knowledgeable about, and has experience related to, rural local government wastewater systems or public water systems, to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of odd-numbered years.
- (8) One member who either (i) is a county commissioner of a rural county or (ii) resides in a rural county and is knowledgeable about, and has experience related to, public health services, to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of even-numbered years.
- (9) One member who is familiar with wastewater, drinking water, and stormwater issues and related State funding sources, to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of odd-numbered years.

(c) Terms. – The members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall serve two-year terms. The other

members, who are ex officio members or designees of those members, shall serve until they are no longer in office or are replaced with another designee.

(d) Chair. – The Director of the Division of Water Infrastructure, or the Director's designee, shall serve as Chair of the Authority. The Chair must call the first meeting. The Chair shall serve as a nonvoting member, provided, however, that the Chair shall vote to break a tie.

(e) Meetings. – The Authority shall meet at least four times a year and may meet as often as needed. A majority of the members of the Authority constitutes a quorum for the transaction of business. The affirmative vote of a majority of the members present at a meeting of the Authority is required for action to be taken by the Authority.

(f) Vacancies. – A vacancy in the Authority or as Chair of the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made. The term of an appointment to fill a vacancy is for the balance of the unexpired term.

(g) Compensation. – Each member of the Authority shall receive no salary as a result of serving on the Authority but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. (2013-360, s. 14.21(b); 2013-363, s. 5.12; 2015-241, s. 14.30(u).)

§ 159G-71. State Water Infrastructure Authority; powers and duties.

The Authority has the following additional duties:

- (1) After reviewing the recommendations for grants and loans submitted to it by the Division, to determine the rank of applications and to select the applications that are eligible to receive grants and loans, consistent with federal law.
- (2) To establish priorities for making loans and grants under this Chapter, consistent with federal law.
- (3) To review the criteria for making loans and grants under G.S. 159G-23 and make recommendations, if any, to the Department for additional criteria or changes to the criteria, consistent with federal law.
- (4) To develop guidelines for making loans and grants under this Chapter, consistent with federal law.
- (5) To develop a master plan to meet the State's water infrastructure needs.
- (6) To assess and make recommendations on the role of the State in the development and funding of wastewater, drinking water, and stormwater infrastructure in the State.
- (7) To analyze the adequacy of projected funding to meet projected needs over the next five years.
- (8) To make recommendations on ways to maximize the use of current funding resources, whether federal, State, or local, and to ensure that funds are used in a coordinated manner.
- (9) To review the application of management practices in wastewater, drinking water, and stormwater utilities and to determine the best practices.
- (10) To assess the role of public-private partnerships in the future provision of utility service.
- (11) To assess the application of the river basin approach to utility planning and management.
- (12) To assess the need for a "troubled system" protocol. (2013-360, s. 14.21(b).)

§ 159G-72. State Water Infrastructure Authority; reports.

No later than November 1 of each year, the Authority shall submit a report of its activity and findings, including any recommendations or legislative proposals, to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division with the report required by G.S. 159G-26(a) as a single report. (2013-360, s. 14.21(b); 2017-10, s. 4.17(b).)